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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 SUSAN A. PRICE,

No. CIV.S-04-1235 GEB DAD PS

12 Plaintiff,

13 v.

ORDER

14 CALIFORNIA DEPARTMENT OF  
15 CORRECTIONS, CORRECTIONAL  
TRAINING FACILITY, SOLEDAD,

16 Defendant.  
17 \_\_\_\_\_/

18 Plaintiff, proceeding pro se, has renewed her request for  
19 appointment of counsel. As plaintiff previously has been advised,  
20 three factors are relevant to the determination of whether counsel  
21 should be appointed to represent a plaintiff in an employment  
22 discrimination case: (1) plaintiff's financial resources, (2) the  
23 efforts already made by plaintiff to secure counsel, and (3) whether  
24 plaintiff's claim has merit. Bradshaw v. Zoological Soc'y of San  
25 Diego, 662 F.2d 1301, 1318 (9th Cir. 1981). Appointment of counsel  
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1 is not a matter of right. Ivey v. Board of Regents, 673 F.2d 266,  
2 269 (9th Cir. 1982).

3         The court having granted plaintiff's request to proceed in  
4 forma pauperis, plaintiff has made an adequate showing of indigency.  
5 The second factor above also has been satisfied, plaintiff having  
6 submitted numerous pieces of correspondence between plaintiff and  
7 various attorneys regarding plaintiff's efforts to secure counsel,  
8 with no counsel having elected to represent plaintiff. As to the  
9 third factor, while the court has not prejudged the matter, it is not  
10 convinced at this stage of the proceedings that plaintiff's claim has  
11 merit such that counsel should be appointed. Plaintiff also has  
12 offered no argument in this regard. Accordingly, plaintiff's renewed  
13 motion for appointment of counsel will be denied.

14         Finally, plaintiff recently filed a "request for subpoena  
15 duces tecum," asking the court to order defendant to produce certain  
16 documents. Plaintiff filed a similar "request for subpoena duces  
17 tecum" seeking documents from non-party California State Employees  
18 Association ("CSEA"). However, the court is not in a position to  
19 grant plaintiff the relief she seeks in this regard. A party, such  
20 as defendant, may be compelled to produce records or other evidence  
21 in its possession or control in response to a Federal Rule of Civil  
22 Procedure 34 "Request for Production." In contrast, documents and  
23 tangible evidence held by a non-party, such as CSEA, can be obtained  
24 by serving a Federal Rule of Civil Procedure 45 subpoena, which is  
25 issued by the Clerk of the Court at the request of the party seeking  
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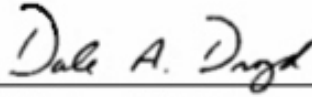
1 the documents. See William W. Schwarzer, et al., Federal Civil  
2 Procedure Before Trial, § 11:1805, 11:1809 (2005).

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Plaintiff's motion for appointment of counsel is  
5 denied; and

6 2. Plaintiff's requests for subpoena duces tecum are  
7 denied.

8 DATED: November 14, 2005.

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10 DALE A. DROZD  
11 UNITED STATES MAGISTRATE JUDGE

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